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<b>SHIRLEY BOONE</b>	)	
	)	
Complainant	)	
	)	
v.	)	Case No. 81-06
	)	August 29, 2007
<b>SENECA KNOLLS CONDOMINIUM</b>	)	
<b>ASSOCIATION</b>	)	
	)	
Respondent	)	
	)	

In November 2006 Complainant Shirley Boone filed a complaint with the Commission on Common Ownership Communities ("the Commission") alleging that Respondent Seneca Knolls Condominium Association failed to properly repair roof and window leaks that were its responsibility to repair. Complainant alleged that these leaks damaged the interior ceilings and walls of her condominium unit. Complainant asked that Respondent repair the damage to her unit using a contractor of Complainant's choice and that Respondent reimburse her living expenses while the work was being done, since Respondent is an asthmatic and would have to leave while paint and other construction materials were being used.

On 7/11/07 at 1:00 pm we entered the unit and I asked Ms. Boone to show us the areas that needed to be repaired. Ms. Boone stated that she had already had the repairs completed in her unit by her contractor. We inspected the unit and it appeared as if there were no repairs needed.

*See also* Complainant's letter dated July 16, 2007: "I told Nancy I recently had the damaged walls and ceiling repaired for health reason [sic] as well as my plan to sell my home."

Respondent has moved for dismissal of the complaint with prejudice and for an order relieving Respondent of liability for the cost of repairs performed by Complainant. Complainant has in turn requested the following relief:

1. Scheduling a hearing without any more delays;
2. Punitive damages, for emotional stress, intimidation, slander, and harassment;
3. Compensation for lost wages due to having to meet contractors so frequently (*See* Complainant's letter of August 20, 2007 at p.2: "(I am a contractor who get [sic] paid for hours work [sic], if my hours are short because of meeting contractors, I did not get paid for lost time.)");
4. Replacement expenses for blinds in sun/dining and MBR windows (5 blinds), shampoo carpet in living room, dining room and MBR after leaks, dry cleaning of window treatment for MBR and dining room;
5. Cleaning expenses after repairs;
6. Reimbursement for all medical bills associated with mold and mildew exposure; and
7. Loss for not settling claims for drywall and ceiling damages before decrease in market prices that affect her unit's value.

Notably, Complainant appears not to be requesting reimbursement of her repair expenses, nor does she include a request for living expenses as per the original complaint.

Since any necessary repairs have now been completed, albeit by Complainant herself, and since Complainant is no longer asking for any of the other relief set out in her original complaint, the Panel concludes that the complaint should be dismissed as moot. *Paskowitz v. Wohlstadter*, 151 Md.App. 1, 16 (2003) (trial court properly dismissed complaint as moot, where complaint sought to remove corporate directors based on allegedly improper elections but where directors had subsequently been re-elected).

Treating Complainant's July 16 letter as a motion to amend the complaint to add additional requests for relief, the Panel denies the motion because the newly requested relief,

and the claims implied thereby, either do not constitute disputes within the Commission's jurisdiction or because the tort-type damages Complainant seeks cannot, as a legal matter, be awarded here. MONTGOMERY. COUNTY, MD. CODE ' 10B-8(3) and (4) (definition of "dispute" does not include a personal injury action); *Hoffman v. Stamper*, 385 Md. 1, 36 (2005) (compensation for mental anguish resulting from damage to property is generally denied); *Hall v. Lovell Regency Homes Ltd. Part.*, 121 Md.App. 1, 12-13 (1998) (measure of damages in property damage case is cost of repair or, alternatively, loss in value of property); *Alexander & Alexander Inc. v. B. Dixon Evander & Asso., Inc.*, 336 Md. 635, 654-55 (Md. 1994) (breach of contract does not allow for recovery of consequential losses such as emotional distress and punitive damages).

Dismissal of the complaint will be without leave to amend to plead a claim for costs of repair or loss in value of the unit. As pointed out above, Complainant's July 16 letter does not appear to include such a claim. The only justification for allowing such a claim now would be that the complaint as originally filed is moot. But the complaint has become moot solely as a result of Complainant's own action in doing the repair work herself. Moreover, she did so despite the Panel's clear and explicit order that Complainant cooperate in arrangements for Respondent to inspect the unit. *See* Order dated June 26, 2007:

2. Within 30 days after the date of this Order, Respondent, through any representative or contractor of its choosing, may inspect Complainant's unit for the limited and sole purposes of (a) determining whether an active leak exists which affects Complainant's unit, (b) repairing any such leak, (c) determining whether any damage exists to Complainant's unit as a result of any prior or active leak into Complainant's unit, and (d) assessing the nature and extent of any such damage, but Respondent will not at this time undertake to repair any such damage.

\* \* \*

4. Complainant will cooperate with Respondent and its representative or contractor in arranging for such inspection.

Two earlier Panel orders also directed Complainant to cooperate.

In the Panel's view, performing the repair work in the face of a clear and explicit order that Complainant cooperate in allowing inspection of the alleged damage is the equivalent of spoliation of evidence. As a result, it now difficult if not impossible for Respondent to assess and determine the cause of any damage. Sanctions are therefore appropriate. *Broccoli v. Echostar Communications Corp.*, 229 F.R.D. 506, 511-12 (D.Md. 2005) (employer's

failure to preserve relevant documents for potential discrimination litigation warranted sanctions). The appropriate sanction here is denying leave to amend.

Accordingly, it is, this 29th day of August, 2007, ORDERED as follows:

1. Treating Complainant's July 16 letter as a motion to amend the complaint, the motion is DENIED.
2. The complaint is DISMISSED as moot without leave to amend.

Panel members Richard J. Leeds and Robert A. Gramzinski concur in this Decision and Order.

This Decision and Order is intended as a final disposition of all claims in this case. Any party aggrieved by the action of the Commission may file an administrative appeal to the Circuit Court for Montgomery County, Maryland within thirty days after this Order, pursuant to the Maryland Rules of Procedure governing administrative appeals.

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Charles H. Fleischer, Panel Chair